

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING THE MOTION TO COMPEL RESPONSES FROM QWEST
COMMUNICATIONS TO GREENLINING'S FIRST SET OF DATA REQUESTS**

This ruling denies the motion of the Greenlining Institute ("Greenlining") to Compel Discovery Responses from Qwest Communications Corporation ("Qwest"), as discussed below.

Position of Greenlining

Greenlining seeks to compel Qwest to respond to Greenlining's first set of data requests, attached to its motion as Exhibit A. In this set of data requests, Greenlining asked Qwest to provide information regarding Qwest's Women, Minority, and Disabled Veterans Business Enterprises (WMDVBE) program under Sections 8281-86 of the California Public Utilities Code.

Greenlining sought this same information from the Applicants without objection, and now seeks similar information from Qwest. Greenlining claims that it needs this data in order to fully litigate issues relating to minority

contracting issues in this docket. Greenlining is in the process of preparing its cross-examination of SBC's witnesses on the issue of WMDVBE and intends to possibly compare Qwest's performance with the WMDVBE goals of the merged company. In order to do so, Greenlining seeks Qwest's responses to these data requests.

Greenlining argues that Qwest's responsive data may demonstrate that Qwest does not have a WMDVBE program in violation of the California Code and the Commission's General Order 156. If true, Greenlining argues, the data may demonstrate that Qwest has violated the clean hands doctrine with respect to the subject matter of Qwest's claims against SBC in this proceeding. Greenlining requests that the Commission order Qwest to produce copies of responses to all of Greenlining's data requests as attached hereto no later than 10 business days after the issuance of a ruling on its motion.

Response of Qwest

Qwest filed a response in opposition to the motion on August 1, 2005. Qwest argues that Greenlining fails to explain how the material requested is relevant to any issue of law or fact raised by Qwest in this proceeding. Qwest further contends that Greenlining has another purpose for seeking the Qwest data that has nothing to do with the issues in this proceeding. As set forth in the Declaration of Susan Mohr, attached to Qwest's response, Qwest indicates that Greenlining has expressed interest in the Qwest WMDVBE program for some time, and at one point, stated an intent to have the Commission investigate Qwest's General Order (GO)-156 Report. Qwest claims that Greenlining appears to be using this docket as a convenient forum through which to seek more data pursuant to its inquiry into Qwest's program. Qwest argues that granting the

motion would enable Greenlining to misuse the docket for irrelevant purposes and place undue strain on the procedural schedule.

Discussion

Greenlining's motion to compel discovery from Qwest relating to its first set of data requests, as identified above, is hereby denied. Greenlining has failed to show how the data that it seeks through its motion is relevant to the issues raised by Qwest, or to Greenlining's own showing with respect to whether the SBC/AT&T merger is in the public interest. In an attempt to show some relevance to the Qwest data, Greenlining claims that it may use the data to possibly compare Qwest's performance with the WMDVBE goals of the merged company. Yet, Greenlining goes on to claim that Qwest's responsive data may demonstrate that Qwest does not have a WMDVBE. If Greenlining suspects that Qwest has no WMDVBE program, however, then there would be no logical point to seeking the Qwest data as a benchmark to evaluate the WMDVBE program of the merged company. In any event, Greenlining has not shown how Qwest WMDVBE program data is relevant with respect to Greenlining's litigation of issues relating to the WMDVBE program of the merged company, or whether the SBC/AT&T merger is in the public interest.

Greenlining also argues that if the data discloses that Qwest does not maintain an adequate WMDVBE program, such a deficiency may demonstrate that Qwest has violated the "clean hands doctrine" with respect to the subject matter of Qwest's claims against SBC in this proceeding. Yet, Greenlining does not identify any Qwest claims in this proceeding that relate to the WMDVBE program. Qwest's claims against SBC in this proceeding relate to the issues of special access and DSL. Greenlining fails to explain how Qwest's performance

regarding its WMDVBE program would invoke the “clean hands doctrine” with respect to Qwest’s claims on entirely unrelated issues.

In summary, because Greenlining has failed to justify the relevance of the requested data, Qwest shall not be compelled to provide a response to the data request.

IT IS RULED that the motion of Greenlining Institute to Compel Discovery Responses from Qwest Communications Corporation, as discussed above, is hereby denied.

Dated August 2, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding the Motion to Compel Responses from Qwest Communications to Greenlining's First Set of Data Requests on all parties of record in this proceeding or their attorneys of record.

Dated August 2, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.